

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

MARIO LOREDO)

Station KZQD(FM))

Liberal, Kansas)

MM Docket No. 96-172

To: The Honorable Richard L. Sippel
Administrative Law Judge

Jan 16 '97

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF MARIO LOREDO**

Mario Loreda, by his attorneys, hereby submits his Proposed Findings of Fact and Conclusions of Law in the above-captioned proceeding.

PROCEDURAL HISTORY

1. By Order to Show Cause and Notice of Apparent Liability, FCC 96-352, released August 27, 1996 ("Order"), the Commission ordered Mario Loreda to show cause why the permit for KZQD(FM), Liberal, Kansas, should not be revoked. The Order specified the following issues:

(1) to determine whether Mario Loreda made misrepresentations to the Commission, and violated 47 C.F.R. Section 73.1015, by stating in his assignment application (BAPH-930824GE), that he was a citizen of the United States and that he was not in violation of Section 310 of the Communications Act of 1934, as amended, when, in fact, he was a citizen of Mexico, and (2) to determine, in light of the evidence adduced pursuant to the foregoing issue, whether Mario Loreda

possesses the requisite qualifications to be and remain the permittee of KZQD(FM), Liberal, Kansas. Order at ¶8.

The Order placed the burden of proceeding and the burden of proof on the Mass Media Bureau. Order at ¶9.

2. The Order also specified that if it is determined that the record does not warrant an order revoking the permit for the station, it shall be determined whether an order of forfeiture should be issued in an amount not to exceed \$250,000 for the willful and/or repeated violation of Section 310(b) of the Communications Act of 1934, as amended, and/or Section 73.105 of the Commission's Rules. Order at ¶11.

3. A pre-hearing conference was held on October 9, 1996, and a hearing took place on November 14, 1996. By Order (FCC 96M-254), released November 18, 1996, the Presiding Judge ordered the filing of proposed findings of fact and conclusions of law which shall include a section on an appropriate forfeiture in accordance with the contingency for forfeiture specified in the hearing designation order.

PROPOSED FINDINGS OF FACT

4. Mr. Loredó was born on April 17, 1950, and has lived in the United States since he was nine years old. Loredó Ex. 1, p. 2. His mother is a U.S. citizen, but he was born in Mexico. Id. He became a legal resident in the early 1970s, and has lived and worked in the United States ever since. Id. He has four adult children, ranging in age from 27 to 18, all of whom are U.S. citizens. Id.

5. Mr. Loredó has a seventh grade education (Tr. 43) and received his high school equivalency GED certificate in August 1992 (Loredó Ex. 3).

6. Mr. Loredo has been an ordained minister for the past 10 years, and plans to transmit Hispanic religious-oriented programming over FM radio station KZQD to the sizable Hispanic population who reside in the Liberal, Kansas community. Loredo Ex. 1, p. 2.

7. In the summer of 1993, Mr. Loredo negotiated the purchase of the construction permit for KZQD for \$4,000.00 with Pastor David Brace of Alpha Broadcasting, Inc., who was represented by Gerald Stevens-Kittner of Arter & Hadden. Id. Subsequently, Mr. Loredo also engaged Gerald Stevens-Kittner to help him with the acquisition of KZQD. Id. After he negotiated the purchase, and signed a contract, he received a letter dated August 3, 1993, from Mr. Stevens-Kittner and a draft of a completed application on FCC Form 314 for FCC consent to the assignment of the permit for station KZQD from Alpha Broadcasting, Inc. to him (the "Form 314"). Id. The letter asked him to review the application carefully, paying particular attention to the Assignee's portion. Id. If no changes were required, he was to sign and return the application to Mr. Stevens-Kittner. Id. Mr. Loredo testified that he does not recall receiving the instructions to Form 314 with the draft application and the letter. Id. He also testified that he does not recall discussing the individual questions or the answers with Mr. Stevens-Kittner. Id.

8. Mr. Loredo testified that in reading the draft application he was presented with back in August, 1993, he saw that Item 4(b) of Section II (Assignee's Legal Qualifications) of the Form 314, which asks for the applicant's citizenship, was answered "USA." Id., p.3. He also saw that Item 13(a) of Section II of the Form 314, which asks "Is the applicant in violation of the provisions of Section 310 of the Communications Act of 1934, as amended, related to the interests of aliens and foreign governments? (See Instruction C to Section II), " was answered "No." Id. Mr. Loredo testified that his recollection was that upon reviewing Form 314 at the

time, it was not clear to him that Items 4(b) and 13(a) were making a distinction between citizenship and legal residency. Id. He was used to completing employment and other government-related forms that asked both whether he was a U.S. citizen and/or a legal resident. Id. Mr. Loredo testified that he has never been denied any benefits or employment opportunities because he was a legal resident of the United States and not a U.S. citizen. Tr. 41. With respect to Item 4(b) of Form 314, Mr. Loredo testified that he didn't understand the question, that it didn't ask any question other than citizenship and he thought it was just asking for a legal status rather than citizenship. Tr. 30. Mr. Loredo testified that he did not think that the reference to "alien" in Item 13(a) applied to him since he had been in the United States since he was a young boy. Tr. 37. Even though he speaks and reads English reasonably well as a second language, Mr. Loredo testified that he was confused by the questions and his incorrect responses were rendered innocently and inadvertently. Loredo Ex. 1, p. 3. He testified that he did not intend to misrepresent his citizenship on Form 314. Id., Tr. 42, 54.

9. Mr. Loredo testified that he was not aware that the application he signed contained incorrect responses until some time just prior to the May 1995 filing of FCC Form 307 for an extension of time to construct KZQD. Id. Mr. Loredo testified that shortly before then, he had a conversation with a friend who was buying a radio station in Texas. Id. During that conversation, the friend happened to mention that an individual must be a U.S. citizen to own a radio station. Id. This prompted Mr. Loredo to review the Form 314, and to call Mr. Stevens-Kittner to point out that he may have inadvertently answered Items 4(b) and 13(a) incorrectly. Id. Mr. Loredo testified that he then instructed Mr. Stevens-Kittner to bring this error to the Commission's attention, and to inform the Commission that he would immediately begin seeking

U.S. citizenship. Id. These instructions precipitated the disclosure in the May 4, 1995, filing of Form 307 that he had made an error in his answer to Item 4(b) of Form 314. Id. In the application on Form 307, he responded “No” to Item 8, which asked “Are the representations contained in the application for construction permit still true and correct?” and included, as Exhibit 2, a disclosure that he had realized that his answer to Item 4(b) of the aforementioned FCC Form 314 was incorrect in that he was not a U.S. citizen, and that he was applying to become a U.S. citizen. Id., p. 4.

10. Thereafter, Mr. Loredó filed, through his FCC counsel, an application on FCC Form 301 to make minor modifications to KZQD, which was accompanied by a transmittal letter from counsel providing a legal basis for the Commission to waive the citizenship requirement for a radio station permittee in light of Mr. Loredó’s particular circumstances. Id.

11. On October 6, 1995, a letter was filed with the Commission as an amendment to the pending application for an extension of the KZQD construction permit, which reported that Mr. Loredó was to be sworn in as a U.S. citizen on December 18, 1995. Id.

12. Finally, a letter dated February 23, 1996, was filed with the Commission as a further amendment to the pending application for an extension of the KZQD construction permit, which attached a Certificate of Naturalization dated December 18, 1995, certifying Mr. Loredó’s new status as a citizen of the United States. Id.

PROPOSED CONCLUSIONS OF LAW

13. The issues in this case seek to determine whether the permittee made misrepresentations to the Commission in violation of Section 73.1015 of the Commission's Rules. The Order placed the burden of proceeding and the burden of proof on the Mass Media Bureau.

14. A misrepresentation is a false statement of fact made with an intent to deceive the Commission. Fox River Broadcasting, Inc., 93 FCC 2d 127, 129, 53 RR 2d 44, 46 (1983). A necessary and essential element of misrepresentation is intent to deceive. The mere existence of a mistake in an application, without any evidence that the licensee meant to deceive the Commission, does not equal misrepresentation. Cannon Communications Corp., 5 FCC Rcd 2695, 2700, 67 RR 2d 1159, 1166 (Rev. Bd. 1990), quoting from MCI Telecommunications Corp., 3 FCC Rcd 509, 512 (1988). Mr. Loredo's statement in his assignment application that he was a citizen of the United States and that he was not in violation of Section 310 of the Communications Act of 1934, as amended, when, in fact, he was a citizen of Mexico, was a product of unsophistication, confusion and innocent mistake, rather than any intention to deceive.

15. The process of completing Form 314 was confusing to Mr. Loredo who has a seventh grade education, speaks English as a second language, and obtained his high school equivalency certificate approximately one year prior to signing the Form 314. Mr. Loredo evidenced some difficulty in understanding Ms. Ellington's questions, yet was earnest in his attempts to give truthful answers. Item 13(a) of Form 314 is confusing, especially to a non-lawyer such as Mr. Loredo and particularly without the benefit of having the instructions, which Mr. Loredo did not. Item 13(a) does not define Section 310 of the Communications Act and does

not make clear the connection between “interests of aliens and foreign governments” and the prohibition of Section 310 of the Communications Act. When Mr. Loredo reviewed Item 4(b) of Form 314, he testified that he thought it was referring to his legal status rather than his citizenship. Apparently, given his extended residence in the U.S., and having never before been restricted in his activities by virtue of his Mexican citizenship, Mr. Loredo simply did not conceive of the possibility that he could not apply for a radio station authorization.

16. Further militating against the conclusion that Mr. Loredo deliberately deceived the Commission is his voluntary disclosure of his mistake immediately upon realizing his mistake. Thereafter, he kept the Commission apprised of his pending application to become a U.S. citizen and filed a copy of his Certificate of Naturalization with the Commission. Mr. Loredo’s conduct in this regard is inconsistent with the behavior of someone who is trying to deceive the Commission. Mr. Loredo’s voluntarily disclosure of his mistake strongly supports the conclusion that Mr. Loredo did not intend to deceive the Commission concerning his citizenship.¹ In Re Application of Zephyr Broadcasting, Inc., FCC 96-433, 1996 WL 648180 (Released November 8, 1996).

17. The record contains no factual evidence to support the conclusion that Mr. Loredo intentionally deceived the Commission. On the contrary, the evidence points in the opposite direction. Mr. Loredo made a mistake in completing the FCC form, and while mistakes are not to be condoned, particularly in a matter as important as citizenship, a mistake is not equivalent to an intentional deception. The Bureau failed to sustain its burden of proof.

¹ If Mr. Loredo were a cynical, deceptive person, he would have had the option of having his 27-year old son, who is a U.S. citizen, be the assignee of the construction permit for the station. That Mr. Loredo did not choose this route is further evidence of his honesty and integrity.

ULTIMATE CONCLUSIONS

18. The ultimate issue for decision is whether, on the basis of evidence adduced at hearing, the permit for KZQD(FM), Liberal, Kansas, should be revoked. It is concluded that Mr. Loredo did not make misrepresentations to the Commission, and did not violate Section 73.1015 of the Commission's Rules. For the foregoing reasons, the permit for KZQD(FM), Liberal, Kansas, should not be revoked and the imposition of a forfeiture is not recommended. Mr. Loredo shall, however, be admonished for his mistake, and is forewarned that he must exercise heightened diligence in his future dealings with the FCC. See In Re Application of Zephyr Broadcasting, Inc., FCC 96-433, 1996 WL 648180 (Released November 8, 1996).

Respectfully submitted,

MARIO LOREDO

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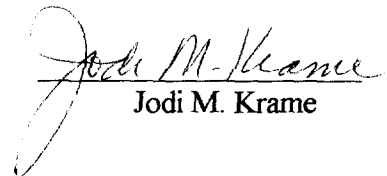
His attorneys

December 20, 1996

CERTIFICATE OF SERVICE

I, Jodi M. Krame, hereby certify that I have this 20th day of December, 1996, caused to be served a copy of the foregoing "Notice of Appearance" by hand delivery on:

Jacqueline Ellington, Esq.
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8210-A
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Jodi M. Krame